

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re Terrorist Attacks on September 11, 2001	03 MDL 1570 (GBD) (FM) ECF Case
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This document relates to:

Ashton et al. v. al Qaeda Islamic Army, et al., 02-cv-6977 (GBD)(FM)

The Ashton Personal Injury Plaintiffs' Motion for Partial Summary Judgment

For the reasons set forth below, those plaintiffs in the above-captioned case making claims for personal injuries (the “*Ashton* personal injury plaintiffs”), by and through their counsel Kreindler & Kreindler LLP, respectfully move this Court to award them compensatory and punitive damages for the pain and suffering each of them experienced in the days, weeks, months and years following the September 11, 2001 terrorist attacks in the same amount that this Court previously awarded to the group of *Ashton* plaintiffs representing the interests of decedents killed in those attacks (the “*Ashton* wrongful death plaintiffs”) for the pre-death conscious pain and suffering those decedents experienced, and further award the *Ashton* personal injury plaintiffs prejudgment interest. The *Ashton* personal injury plaintiffs will move for final judgment at a later time.

I. Procedural Background

Relying on evidence and arguments submitted by various plaintiffs, including the *Ashton* wrongful death plaintiffs, in this consolidated multi-district litigation arising out of the September 11, 2001 terror attacks, this Court previously issued a default judgment on liability against Iran on behalf of all *Ashton* plaintiffs. *See* 03-md-1570 (02-cv-6977) (S.D.N.Y.) (GBD) (FM), Doc. No. 3008, Entered 08/26/2015. Subsequently, the *Ashton* wrongful death plaintiffs

moved for partial summary judgment for the conscious pain and suffering that their decedents suffered before death, which a December 28, 2015 Report and Recommendation to this Court recommended be granted, and recommended awarding a default judgment against Iran in the amount of \$7,556,880,000, representing compensatory damages of \$2 million per decedent and punitive damages of \$6.88 million per decedent. *See* 03-md-1570 (02-cv-6977) (S.D.N.Y.) (GBD) (FM), Doc. No. 3175, Entered 12/28/15. The Report and Recommendation also concluded that to the extent the *Ashton* wrongful death plaintiffs' claims arose out of injuries in New York State the proper rate of prejudgment interest was 9 percent per annum from September 11, 2001 until the date judgment was entered and to the extent the injuries arose elsewhere 4.96 percent interest per annum compounded annually was appropriate. *See* 03-md-1570 (02-cv-6977) (S.D.N.Y.) (GBD) (FM), Doc. No. 3175, Entered 12/28/15, pp. 1 – 2.

For the reasons below as well as those set forth in the motion for partial summary judgment made by the *Ashton* wrongful death plaintiffs, the *Ashton* personal injury plaintiffs now move this Court to grant the attached proposed Order awarding them the same amount of compensatory and punitive damage as awarded to the wrongful death plaintiffs for their decedents' conscious pain and suffering; that is, compensatory damages of \$2 million per personal injury plaintiff and punitive damages of \$6.88 million per injury plaintiff.

II. Personal Injury Damages

Under 28 U.S.C. § 1605A ("Section 1605A"), which applies to the claims against Iran, damages are available under the federal law and include money damages "for personal injury or death." *See* 28 U.S.C. § 1605A(a)(1) and (c)(4). The damages available to plaintiffs in a Section 1605A action include "economic damages, solatium, pain and suffering, and punitive damages."

28 U.S.C. § 1605A(c)(4). The *Ashton* personal injury plaintiffs are therefore entitled to compensation under Section 1605A for their pain and suffering.

The types of suffering the personal injury plaintiffs have experienced over the past nearly 15 years is well documented and ranges from post-traumatic stress-disorder to severe psychiatric disorders, heightened rates of asthma, cancer and other respiratory diseases. *See, e.g.*, Bowler RM, Harris M, Li J et al. Longitudinal Mental Health Impact Among Police Responders to the 9/11 Terrorist Attack. *American Journal of Industrial Medicine*. 2011 Dec 27. doi: 10.1002/ajim.22000; Katz CL, Levin S, Herbert R, et al. Psychiatric Symptoms in Ground Zero Ironworkers in the Aftermath of 9/11: Prevalence and Predictors. *Psychiatric Bulletin* 2009; 33: 49-52; Mauer MP, Cummings KR & Hoen R. Long-term Respiratory Symptoms in World Trade Center Responders. *Occupational Medicine*. 2010; 60(2):145-151.

In a prior Report and Recommendation adopted by this Court, it was found that

“[t]he effort after a tragedy of this nature to calculate pain and suffering is difficult at best. Unfortunately, there is no way to bring back [the decedents] and no way to even come close to understanding what [they] experienced during their last moments. Under our legal system, compensation can only be through the award of a sum of money. While always difficult and never exact, the devastation and horror accompanying this tragedy makes a realistic appraisal almost impossible.”

See 03-md-1570 (03-cv-9848) (S.D.N.Y.) (GBD) (FM), Doc. No. 2618, Entered 07/30/2012

(“*Havlish* Recommendation and Report on Damages”), p. 8, quoting *Smith ex rel. Smith v.*

Islamic Emirate of Afghanistan, 262 F. Supp. 2d 217, 233 (S.D.N.Y. 2003), amended, 2003 WL 23324214 (S.D.N.Y. May 19, 2003). Accordingly, a uniform compensatory award for pain and suffering for the decedents was awarded in the amount of \$2 million per person with punitive damages awarded in the uniform amount of \$6.88 million per person.

As with the decedents in the wrongful death actions, though each person may have experienced different levels of pain and suffering, calculating a precise award for each person's "individual pain and suffering [is] impossible." *Havlish* Recommendation and Report on Damages, p. 9. In these circumstances, it is fair, sound and practical to treat each victim equally and make a uniform award to each plaintiff for the pain and suffering he or she experienced. Given that the over 1,600 *Ashton* personal injury plaintiffs have been living with the ongoing deleterious mental and physical health effects of the September 11th attacks for over 14 years, an award of compensatory and punitive damages for their injuries matching that ordered for the conscious pain and suffering of the those who were tragically killed in the attacks is reasonable and appropriate. *See Mastrantuono v. United States*, 163 F. Supp. 2d 244, 258 (S.D.N.Y. 2001) ("When determining the appropriate damages for pain and suffering, [the Court] is bound by a standard of reasonableness.") (citing *Battista v. United States*, 889 F. Supp. 716, 727 (S.D.N.Y. 1995)). Further, an award of prejudgment interest is appropriate for the *Ashton* personal injury plaintiffs, just as it was for the damages previously awarded to the wrongful death plaintiffs for their conscious pain and suffering. *See* 03-md-1570 (02-cv-6977) (S.D.N.Y.) (GBD) (FM), Doc. No. 3175, Entered 12/28/15, pp. 7 – 9. Accordingly, the *Ashton* personal injury plaintiffs ask that they be awarded prejudgment interest at the rates established in the wrongful death action report and recommendation.

III. Conclusion

For all of the reasons herein, as well as those set forth in the submissions of the *Ashton* wrongful death plaintiffs and the *Havlish* plaintiffs, the *Ashton* personal injury plaintiffs respectfully request that this Court award them compensatory damages in the amount of \$2,000,000 for each plaintiff's pain and suffering, punitive damages for the pain and suffering of

\$6,880,000 for each plaintiff and prejudgment interest of 9% on the compensatory pain and suffering awards to run from September 11, 2001 until the date of judgment to the extent that their injuries arose in New York or 4.96% to the extent the injuries arose elsewhere.

Dated: New York, New York
January 7, 2016

Respectfully submitted,

KREINDLER & KREINDLER LLP

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SOUTHERN DISTRICT OF NEW YORK

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[PROPOSED] PARTIAL ORDER OF SUMMARY JUDGMENT

Upon consideration of the evidence and arguments submitted by personal injury Plaintiffs in the *Ashton* cases referenced above and the Judgment by Default Against the Islamic Republic of Iran entered on 08/26/2015, together with the entire record in this case, it is hereby;

ORDERED that partial summary judgment is entered on behalf of all *Ashton* personal injury Plaintiffs in *Ashton et al. v. Al Qaeda Islamic Army et al.*, 02-CV-6977 (GBD) (FM) identified in the attached Exhibit A against the Islamic Republic of Iran; and it is

ORDERED that the *Ashton* personal injury Plaintiffs identified in the attached Exhibit A are awarded: (1) compensatory damages for pain and suffering in the amount of \$2,000,000 for each plaintiff; (2) punitive damages for pain and suffering in the amount of \$6,880,000 for each of those plaintiffs; and (3) prejudgment interest on the compensatory damages awards for pain and suffering of each plaintiff to be calculated at the rate of 9% per annum from September 11, 2001 until today.

Dated: New York, New York
_____, 2016

SO ORDERED:

GEORGE B. DANIELS
UNITED STATES DISTRICT JUDGE